IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.594-MA of 2006
Date of Decision: December 15, 2006

State of Haryana

.....Appellant

VERSUS

1.Kamla Devi wife of Sh.Jasmer
2.Jasmer son of Ratna Ram,
3.Nirmal @ Rajesh son of Jasmer
All residents of Village Bhamboli Police Station,Chappar,
District Yamuna Nagar.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.PS Sullar, Deputy Advocate General, Haryana.

R S MADAN, J.

By this order we propose to dispose of Criminal Misc.No594-MA of 2006, which has arisen out of the judgment dated 30-5-2006 rendered by the Additional Sessions Judge, Jagadhri in a Sessions Case No.26 of 2005 whereby he acquitted all the accused of the charges framed under Section 304-B/34 of the Indian Penal Code.

In brief, the prosecution case is that PW1 got recorded his statement Ex.PA to Mahabir Singh Assistant Sub Inspector, PW13. In his

statement before the police,it was alleged that his younger sister Santosh Devi was married with accused Nirmal @ Rajesh Kumar, about 1-1/2 to 3 years ago and out of this wedlock, she gave birth to a daughter about 1-1/2 years ago. Whenever Santosh visited her parental house, she used to tell her mother and sister-in-law (Bhabis) that her husband Nirmal @ Rajesh Kumar, mother-in-law Smt.Kamla Devi and father-in-law Jasmer used to harass her without any reason and they used to say that she was not of their liking. On 2-3 occasions, he had also visited the matrimonial home of Santosh and tried to persuade her husband, mother-in-law and father-in-law, not to harass her. It was further stated by the complainant that on that day about 7.00P.M., he had received a telephonic message that his sister Santosh had died whereupon he alongwith his other family members, Jaswant Singh, Sarpanch and other respectables reached Village Bhamboli and saw that the dead body of his sister was lying in the house of the accused and there was ligature mark on her neck. On enquiry, he learnt that his sister had committed suicide by hanging as she was fed up with the conduct of her husband, mother-in-law and father-in-law or they had murdered her. After recording the statement of the complainant, Mahabir Singh, Assistant Sub Inspector made his endorsement on the same and sent the same to the Police Station, on the basis of which formal FIR Ex.PJ was recorded by Tarsem Singh Assistant Sub Inspector, PW11. Mahabir Singh, Assistant Sub Inspector conducted the investigation of the case by visiting the spot and prepared inquest report Ex.PL and the site plan regarding the place of occurrence Ex.PM. He sent the dead body to General Hospital, Yamuna Nagar for post mortem examination. One chain of silver, four chutki and one

nose-pin of the deceased were handed over to the police by the doctor after post mortem, which were taken into possession vide memo Ex.PE.

The case was further investigated by Sunder Singh, Sub Inspector, PW10.On interrogation. The accused were arrested on 4-6-2005. On interrogation, accused Nirmal made a disclosure statement Ex.PG and got recovered chunni of the deceased in pursuance of his disclosure statement and the same was taken into possession vide memo Ex.PH. Scaled site plan regarding the place of occurrence Ex.PF was got prepared from Mulkakh Ram Constable, PW6.

After completing the investigation of the case, challan against the accused was presented in the Court of learned Magistrate, who in turn committed the case to the Court of Sessions.

On appearance of the accused, a prima facie case was made out against the accused under Section 304-B of the Indian Penal Code. The aforesaid charge was read over and explained to them, to which they pleaded not guilty and claimed trial.

During the course of trial, the prosecution relied upon the testimony of 13 PWs i.e. PW1-complainant Ram Pal; PW2-Smt.Premo Devi; PW3-Rishipal; PW4-Jogindero; PW5-Dr.Deepika; PW6-Mulakh Raj Constable; PW7-Gulab Singh; PW8-Shimla Devi; PW9-Jaswant Singh; PW10-Sunder Singh Sub Inspector; PW11-Tarsem Singh Assistant Sub Inspector; PW12-Ram Karan and PW13-Mahabir Singh Assistant Sub Inspector and closed the prosecution evidence.

After the evidence of the prosecution was closed, the statements of the accused were recorded under Section 313 of the Code of

Criminal Procedure, in which the entire incriminating evidence was put to them, to which they denied and pleaded false implication.

Accused Nirmal further submitted that on 3-6-2005, his wife Santosh asked him for meeting the wife of Ramphal at Village Satoli, to which he objected to by saying that her brother Rampal, never came to take her and by saying so he went outside the house. Thereafter, in his absence Santosh committed suicide by hanging herself. He also submitted that Santosh was hot and stub born type of lady. He further submitted that he and Santosh resided separately from his parents.

In defence, the accused examined Ram Chander, Inspector Food & Supply Mustafabad as DW1 and Ram Parshad son of Ratna Ram as DW2.

After going through the prosecution evidence, the learned Additional Sessions Judge, Jagadhri did not find favour with the prosecution version and acquitted all the accused.

Heard.

The learned Additional Sessions Judge while evaluating the evidence of the prosecution and the defence led by the parties, was of the view that the prosecution witnesses PW1-Ramphal, PW2-Premo Devi, PW3-Rishipal, PW4-Jogindro, PW8-Shimla Devi and PW9-Jaswant Singh, Ex.-Sarpanch of Village Tapra gave an exaggerated version than the one set up in the complaint Ex.PA. All the relatives of the deceased had projected the case of demand of dowry death. PW5-Dr.Deepika Gupta, who conducted the post mortem examination opined that cause of death was asphyxia due to hanging, which was ante-mortem in nature and sufficient to cause death in

normal course of events. The remaining witnesses are all formal in nature and the Investigating Officer reiterated the manner in which the investigation was conducted by him.

The learned Additional Sessions Judge was of the view that the case set up in Ex.PA by the complainant is that his sister Santosh (deceased) was being harassed by the accused without any reason. No acts of demand of dowry was set up while suffering the statement before the police. However, when the prosecution witnesses appeared in the Court, they invented the case of demand of dowry and projected a version which was never set up in the statement Ex.PA on the basis of which FIR was recorded.

Learned Additional Sessions Judge, Jagadhri, therefore, was unable to draw any presumption under Section 113-A of the Indian Evidence Act as well as recorded the findings that no offence under Section 306 or 498-A of the Indian Penal Code established. After relying upon the various judgments, he did not find favour with the prosecution version and recorded the findings of acquittal.

Learned State counsel is unable to convince us that a case under Section 304-B of the Indian Penal Code is made out. On the asking of the Court, learned State counsel frankly admitted that no case of dowry death is set up by the complainant in his statement Ex.PA. It is a case where the witnesses of the prosecution tried to improve their version than the one set up in statement Ex.PA.

In this view of the matter, we do not find any infirmity in the order of acquittal recorded by the learned Additional Sessions Judge,

Jagadhri. Accordingly, no case for leave to appeal is made out and the same is hereby declined.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

December 15, 2006
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